

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

VERNON WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

January 20, 2005

No. 250396

Saginaw Circuit Court

LC No. 02-021027-FC

Before: Jansen, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for seven counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(f), kidnapping, MCL 750.349, and extortion, MCL 750.213. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 225 months' to 30 years' imprisonment for CSC I. Defendant was also sentenced to 225 months' to 30 years' imprisonment for his kidnapping and extortion convictions. All sentences are to run concurrently. Although the challenged evidence, post-rape miscarriage, was errantly admitted at trial, because defendant has not shown that he is actually innocent, or that the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings, we affirm.

Defendant argues that he was denied a fair trial when the prosecution elicited evidence from the victim that she suffered a miscarriage subsequent to the attack. To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection which it asserts on appeal. MRE 103(a)(1), *People v Grant*, 445 Mich 535, 545, 553; 520 NW2d 123 (1994); *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). Because defendant failed to raise a specific and timely objection to the admission of this evidence,¹ we review this unpreserved claim for plain error affecting defendant's substantial rights, i.e., the error was outcome determinative. *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004); *People v Carines*, 460 Mich 750, 761-764; 597 NW2d

¹ We note that at trial, defendant's attorney did object when the prosecutor asked the victim if she ever thought about the baby she lost as a follow-up question immediately after inquiring about the miscarriage. However, defendant's counsel did not raise an objection during the prosecutor's questioning about the existence of the fetus and the subsequent miscarriage.

130 (1999). A reviewing court should reverse only if the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Carines, supra*, at 763-764, 774.

The decision to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made, *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000); or the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). A decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 67; 614 NW2d 888 (2000). Moreover, an evidentiary error does not merit reversal in a criminal case, unless, after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative. *People v Smith*, 243 Mich App 657, 680; 625 NW2d 46 (2000).

On appeal, defendant specifically argues that the testimony regarding the victim's miscarriage subsequent to the rape impermissibly raised an inference that defendant's conduct caused the miscarriage because the prosecutor did not present any evidence causally linking the two events. To establish a charge of CSC I, the prosecution must show that defendant caused personal injury to the victim while using force or coercion to accomplish sexual penetration. MCL 750.520b(1)(f). "Personal injury" is defined as "bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss of impairment of a sexual or productive organ." MCL 750.520a(1). Mental anguish means extreme or excruciating pain, distress, or suffering of the mind either at the time of the offense, or after if it resulted from the offense. *People v Petrella*, 424 Mich 221, 259, 276-277; 380 NW2d 11 (1985). We note that the evidence of the victim's miscarriage was relevant to show the mental anguish she suffered after the incident and may be admissible if related. Defendant claims the evidence was both irrelevant and more prejudicial than probative.

All logically relevant evidence is admissible. MRE 401; MRE 402. Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403; *People v Sabin (After Remand)*, 463 Mich 43, 58; 614 NW2d 888 (2000). However, "unfair prejudice" does not mean simply damaging evidence because any relevant evidence will be damaging to some extent. Rather, unfair prejudice exists when there is a tendency that the evidence will be given undue or preemptive weight by the jury, or when it would be inequitable to allow use of the evidence. *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909, mod on other grounds 450 Mich 1212 (1995).

Here, presumptively, the prosecution was using the challenged evidence to prove the victim suffered mental anguish as a result of the events of November 1, 2001. As stated above, mental anguish is one form of personal injury, and the prosecution must prove personal injury in a CSC I case. That stated, our review of the record reveals that the prosecution did not introduce any evidence causally linking the victim's miscarriage to the rape. As such, without any evidence of a causal connection linking the two events, we conclude that the evidence of the

miscarriage, and related inference that it was caused by the rape, were both logically irrelevant and more prejudicial than probative.

However, our analysis does not end here. Although the admission of the challenged evidence was in error, we must reverse only if defendant displays that he is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Carines, supra*, at 763-764, 774. There was a multitude of evidence apart from the challenged evidence that illustrated the victim's personal injuries as defined by MCL 750.520a(1). The victim testified to both physical and emotional trauma she experienced as a result of the assault. The victim testified that in addition to the sexual assault that included multiple penetrations, defendant threatened her life, hit, pushed, grabbed, and choked her, and also dragged her naked body across the street after she tried to escape. Medical professionals confirmed that the victim had swelling and bruising on her face, and abrasions and scratches on her back, neck, knee, and elbow consistent with being dragged. A sexual assault nurse examiner also testified that the victim's mental condition was consistent with those who have been victims of sexual assault. The victim also testified that she had problems trusting people, especially men, since the assault. In light of the plethora of record evidence establishing the elements of CSC I, MCL 750.520b(1)(f), we are not convinced that defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.*

Defendant also argues that his trial counsel was ineffective for failing to object the admission of the challenged evidence regarding the miscarriage. "For a defendant to establish a claim that he was denied his state or federal constitutional right to the effective assistance of counsel, he must show that his attorney's representation fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant has failed to establish ineffective assistance of counsel because although defendant's counsel did err when he failed to object to the challenged evidence regarding the miscarriage, defendant has not shown that but for counsel's error, the result of the proceedings would have been different considering all of the other evidence that establishes the elements of the charged crime. *Id.*

Finally, we reject defendant's assertion that he was denied due process because he did not receive notice of the prosecution's intention to seek sentence enhancement under MCL 769.12. The record clearly establishes that the prosecutor complied with the notice requirement of MCL 769.13(1). In addition, defendant and his attorney acknowledged notice of the intent to seek sentence enhancement at his arraignment.

Affirmed.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Pat M. Donofrio